

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MINT, INC.,

Plaintiff,

- against -

SHOKOMOKO and  
AMAZON.COM, INC.,

Defendants.  
-----X

:  
: 10 CV 9394 (RMB) (AJP)  
: ECF Case  
:  
: **ANSWER OF DEFENDANT**  
: **AMAZON.COM, INC.**

Defendant Amazon.com, Inc. ("Amazon.com"), by its undersigned attorneys,  
hereby answers the Complaint of plaintiff Mint, Inc. ("Plaintiff") as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth  
of the allegations of paragraph 1.

2. Denies knowledge or information sufficient to form a belief as to the truth  
of the allegations of paragraph 2.

3. Admits the allegations of paragraph 3.

4. Admits that plaintiff purports to bring the action in part under the statute  
specified in paragraph 4.

5. Admits that plaintiff purports to bring the action in part under the statute  
specified in paragraph 5.

6. Admits that plaintiff purports to bring the action in part under the statute  
specified in paragraph 6.

7. Admits that plaintiff purports to bring the action in part under the common  
law specified in paragraph 7.

8. Admits the allegations of paragraph 8.

9. Admits the allegations of paragraph 9.

10. Denies the allegations of paragraph 10.

11. Denies the allegations of paragraph 11.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20, except admits that the product referenced in paragraph 20 was offered for sale and was sold by Shokomoko on the amazon.com website.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21.

22. Denies the allegations of paragraph 22, except admits that Shokomoko offered for sale and sold the product referenced in paragraph 20 on the amazon.com website.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23, except admits that Plaintiff sent a letter to Amazon.com dated October 21, 2010, and respectfully refers the Court to the referenced communication for the contents thereof.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24, except admits that Plaintiff sent a letter to Amazon.com dated October 21, 2010, and respectfully refers the Court to the referenced communication for the contents thereof.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 except admits that Amazon.com did not reply to Plaintiff's October 21, 2010 letter and that, for a period of time after October 21, 2010, the product referenced in paragraph 20 was offered for sale and was sold by Shokomoko on the amazon.com website.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 26, except admits that Plaintiff sent a letter to Amazon.com dated November 5, 2010, and respectfully refers the Court to the referenced communication for the contents thereof.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 27 except admits that Amazon.com did not reply to Plaintiff's

November 5, 2010 letter and that, for a period of time after November 5, 2010, the product referenced in paragraph 20 was offered for sale and was sold by Shokomoko on the amazon.com website.

28. Denies the allegations of paragraph 28 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 28.

29. Repeats and incorporates its responses to paragraphs 1 to 28.

30. Denies the allegations of paragraph 30 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30.

31. Denies the allegations of paragraph 31 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31.

32. Denies the allegations of paragraph 32 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32.

33. Repeats and incorporates its responses to paragraphs 1 to 32.

34. Denies the allegations of paragraph 34 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34.

35. Denies the allegations of paragraph 35 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35.

36. Denies the allegations of paragraph 36 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36.

37. Repeats and incorporates its responses to paragraphs 1 to 36.

38. Denies the allegations of paragraph 38 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38.

39. Denies the allegations of paragraph 39 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39.

40. Repeats and incorporates its responses to paragraphs 1 to 39.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 41.

42. Denies the allegations of paragraph 42 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 42.

43. Denies the allegations of paragraph 43 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 43.

44. Denies the allegations of paragraph 44 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 44.

45. Denies the allegations of paragraph 45 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45.

46. Denies the allegations of paragraph 46 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46.

47. Repeats and incorporates its responses to paragraphs 1 to 46.

48. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 48.

49. Denies the allegations of paragraph 49 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49.

50. Denies the allegations of paragraph 50 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 50.

51. Denies the allegations of paragraph 51 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 51.

52. Repeats and incorporates its responses to paragraphs 1 to 51.

53. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53.

54. Denies the allegations of paragraph 54 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54.

55. Denies the allegations of paragraph 55 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55.

56. Denies the allegations of paragraph 56 insofar as they concern Amazon.com, and otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56.

**First Affirmative Defense**

57. The Complaint fails to state a claim upon which relief can be granted.

**Second Affirmative Defense**

58. Plaintiff's claims are barred in whole or in part by 47 U.S.C. § 230.

**Third Affirmative Defense**

59. Plaintiff's claims are barred in whole or in part by the Digital Millennium Copyright Act.

**Fourth Affirmative Defense**

60. If Amazon.com infringed or violated any rights of Plaintiff, it did so innocently and/or without the necessary scienter.

**Fifth Affirmative Defense**

61. Plaintiff's damages, if any, are limited by Amazon.com's innocent intent and/or lack of the necessary scienter.

**Sixth Affirmative Defense**

62. Plaintiff's claims are barred in whole or in part because Plaintiff has failed to mitigate its damages, if any.

**Seventh Affirmative Defense**

63. Plaintiff's claims are barred in whole or in part by the doctrines of preemption, estoppel, waiver, and laches.

WHEREFORE, Amazon.com requests that judgment be entered:

- (A) Dismissing the Complaint in its entirety, with prejudice;
- (B) Awarding Amazon.com the costs and disbursements of this action; and
- (C) Awarding Amazon.com such other and further relief as the Court deems

just and proper.

Dated: New York, New York  
January 7, 2011

FRIEDMAN KAPLAN SEILER &  
ADELMAN LLP

By: /s/ Robert D. Kaplan  
Robert D. Kaplan (rkaplan@fklaw.com)  
Jeffrey R. Wang (jwang@fklaw.com)  
1633 Broadway  
New York, NY 10019-6708  
(212) 833-1100

*Attorneys for defendant Amazon.com, Inc.*